

# The Top Myths, Misconceptions, and Mistakes Made in Medicaid Planning

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## Forget Everything You've Heard About Medicaid Planning

Most things people hear "off the street" about how Medicaid works is bad information based upon numerous myths and misconceptions.

Medicaid planning without the best advice available is *"like walking blindfolded through a minefield"*.

Bad decisions based upon erroneous information can be very costly to correct.

Medicaid Planning is totally and completely **COUNTERINTUITIVE**.

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## Medicare and Medicaid – They May Sound the Same But They're Not

**Medicare:**

There is one Medicare program in the United States, entirely funded and administered by the federal government

Currently provides coverage to approximately 55 million Americans over the age of 65.

Medicare is the national health insurance program for people age 65 or older, certain individuals under age 65 with disabilities, persons with "end-stage renal disease", and those with ALS (Lou Gehrig's Disease).

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## Medicare vs. Medicaid

### Medicare

Entirely funded and administered by the federal government  
Medicare is not "means tested"  
Medicare doesn't pay for **LONG TERM CARE**



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## Why Doesn't Medicare Pay for Long Term Care?

Medicare does not cover long term care beyond 100 days of "skilled nursing facility" (SNF) care.

Medicare does not pay for long term care beyond this because if it did, *the Federal Government would be paying for nursing home care for everyone over the age of 65 in need of such care.*

The bottom line: **THE GOVERNMENT DOES NOT WANT TO GET INTO THE LONG TERM CARE BUSINESS FOR ANYONE OTHER THAN THOSE DEEMED TO NEED IT THE MOST.**



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## Does the Affordable Care Act Impact Delivery of Long Term Care?

The Affordable Care Act (the "ACA") was signed into law by President Obama on March 23, 2010. It originally addressed the problem of long term care through the Community Living Assistance Services and Supports Act (the "CLASS Act").

The CLASS Act created a voluntary, limited, and public long term care benefit to be funded by voluntary enrollment and payment of premiums by citizens.



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## Does the Affordable Care Act Impact Delivery of Long Term Care?

On October 14, 2011, HHS Secretary Kathleen Sebelius sent a letter to Congress advising that "I do not see a viable path forward for CLASS implementation at this time", and the Obama administration abandoned the CLASS Act.

Why? Because actuaries hired by the Federal government advised the Obama administration that unless there was voluntary participation by most, if not all, of the American workforce, there would not be enough funds to pay for the cost of long term care for everyone who required it.

Bottom line: **THE AFFORDABLE CARE ACT HAS NO DIRECT IMPACT ON THE FINANCING AND DELIVERY OF LONG TERM CARE, MAKING MEDICAID PLANNING MORE IMPORTANT TODAY THAN EVER BEFORE.**



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## How Many Medicaid Programs are there in the US?

There are **50 Medicaid programs in the United States**, one for each state.

Each state operates its own "version" of Medicaid

Medicaid pays for **LONG TERM CARE** and is the only widely available government benefit that does so.

Because the government does not want to get into the long term care business, they limit and restrict who can qualify for Medicaid "**means testing**" it.



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## Medical & Financial Requirements for Medicaid Eligibility are Stringent

Must meet Social Security definition of "disability"

Must meet stringent income and asset limitations

- Resource limits
- Income limits



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### Medicaid Resource Rules are Complex

What resources are deemed to be "countable"?

What are "non-countable" resources?



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### Forced Heirship and Medicaid Planning

A common myth and misconception with many in the legal community is the assumption Louisiana abolished forced heirship years ago and it has no direct impact in Medicaid planning.



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### Medicaid Planning is More Important in Louisiana Than in Any Other State



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Estate planning documents  
not valid in Louisiana

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Medicaid Planning is More Important in Louisiana  
Than in Any Other State

Louisiana is the only state in the country with **forced heirship**

Who are forced heirs after 1995?



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### Louisiana's Medicaid Planning Dilemma

Medicaid is "means tested"

Eligible recipients can't have more than \$2,000 in countable resources

Louisiana's forced heirship laws require children with disabilities to inherit at least a minimum portion of parents' estates



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### Most Common Misconception About Medicaid Planning

Assuming that if a Medicaid recipient has more than \$2,000 in assets, he or she can just donate the assets away and immediately qualify for benefits.



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### "Why Can't We Give It Away?" – Donating Assets Can Trigger Stiff Medicaid Penalties

Medicaid applicants can be penalized for disposing of assets in order to achieve Medicaid eligibility

Penalties apply to transfers of property for "less than fair market value".

What are "look back" rules?

How are transfer penalties computed?



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**Myths and Misconceptions about  
Estate Recovery**

Many erroneously assume that if an individual owns a family home, it needs to be sold and/or taken out of his or her name so the State or nursing home won't take it.



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**Medicaid Estate Recovery  
When the Government Wants It Back**

Louisiana Medicaid has the *right* to pursue estate recovery

Families have the *right to resist* estate recovery within the rules

Estate recovery is aimed at the *family home. Why?*

- It is the largest non-countable asset
- It is the asset that appreciates in value
- It is the easiest asset to identify



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**Medicaid Estate Recovery  
When the Government Wants It Back**

Defenses:

Estate recovery can only be pursued for expenses paid by Medicaid for an individual who was 55 years of age or older when he or she received long term care and related hospital and prescription drug services.

No lien can be imposed by the State on an individual's home as long as the spouse of such individual, a child of the individual under age 21, or a child who is blind or permanently disabled is lawfully residing in the home.

The State is prohibited from pursuing estate recovery in cases of undue hardship, which is deemed to exist if an heir's family income is 300% or less than the federal poverty level.

The State cannot pursue estate recovery where the amount to be recovered is economically inappropriate in relation to the expenses of recovery. The State is prohibited from pursuing estate recovery on the first fifteen thousand dollars or one half the median value of homesteads in each parish, whichever is higher.

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Common Mistakes Made by Persons Seeking  
Medicaid Eligibility

Assuming that an individual cannot own anything worth more than \$2,000 in assets in order to be eligible for Medicaid.



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Common Mistakes Made by Persons Seeking  
Medicaid Eligibility

Assuming that in order to protect a client's eligibility for Medicaid benefits, all that is needed is a form for a special needs trust.



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Common Mistakes Made by Persons Seeking  
Medicaid Eligibility

Assuming that a client doesn't need Medicaid because he already qualifies for Medicare or has health insurance.



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Common Mistakes Made by Persons Seeking  
Medicaid Eligibility

Assuming that most people don't need to worry about long term care because they have no intention of ever going into a nursing home and family will always take care of them.



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Common Mistakes Made by Persons Seeking  
Medicaid Eligibility

Assuming that if a client receives a substantial personal injury settlement, he doesn't need a special needs trust because he can spend it all down on purchasing a new home or a vehicle, both of which are non-countable resources for Medicaid eligibility purposes.



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Common Mistakes Made by Persons Seeking  
Medicaid Eligibility

Assuming that an individual doesn't own anything because all resources are in a spouse's name, that person should be able to qualify for Medicaid.



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Common Mistakes Made by Persons Seeking  
Medicaid Eligibility

Assuming that if a Medicaid recipient's name is on a joint bank account, the funds in the bank account can be withdrawn by the non-Medicaid recipient in order to get the funds out of the name of the Medicaid recipient and maintain eligibility.



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Common Mistakes Made by Persons Seeking  
Medicaid Eligibility

Assuming that a Medicaid recipient can give away \$14,000 per year without losing eligibility for Medicaid benefits.



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Common Mistakes Made by Persons Seeking  
Medicaid Eligibility

Assuming that it is better to refrain from telling Medicaid about all funds and resources in the name of a Medicaid applicant, rather than to disclose such information, because there is little or no chance they will ever find out about such resources.



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### Proper Medicaid Planning Requires Careful Analysis of All Fact and Circumstances

Medicaid planning is not a "one size fits all" process

Different types of Medicaid benefits have different eligibility requirements



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### When Seeking Medicaid Benefits, Always Remember...

The importance of being a "squeaky wheel"

Not to accept "no" for an answer

That the "Golden Rule" applies



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He who has the gold makes the rules!



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### Final Thoughts

Rules governing Medicaid are in a constant state of flux.

Solutions that may work today may not work tomorrow, or six months from now, or five years from now.

Critical that wills, trusts, and other planning techniques be revisited on a regular basis.

Questions concerning the drafting and construction of such trusts should be discussed with an attorney familiar with the constantly changing Medicaid rules.



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**For more information, please visit:**

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